

**BEFORE THE APPELLATE AUTHORITY
(Under the Right to Information Act, 2005)
SECURITIES AND EXCHANGE BOARD OF INDIA**

Appeal No. 5711 of 2023

Mayank Kumar Agarwala : Appellant

Vs

CPIO, SEBI, Mumbai : Respondent

ORDER

1. The appellant had filed an application dated May 04, 2023 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated June 01, 2023, responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/23/00126) dated June 08, 2023. The appeal is being taken up for consideration and disposal today due to official exigency. I have carefully considered the application, the response and the appeal and find that the matter can be decided based on the material available on record.
2. **Ground of appeal-** The appellant filed the appeal on the ground that the information provided was incomplete, misleading or false. In view of the submissions made by the appellant in the appeal, I am dealing with the queries and the response provided thereto in the following paragraphs.
3. **Query numbers 1, 3, 4, 6, 7, 8, 12 and 14 - The appellant, vide query numbers**

1. Please let me know what the jurisdiction is or which are the competent court where an Investor/client should file an Appeal U/s 34 of the Arbitration and Conciliation Act, against the SEBI/NSE registered Trading Member / Stock Broker, arbitration of which is held under the Arbitration Mechanism of the NSE/SEBI.

3. Please let me know why my complaint reference no. SEBIE/MH23/00....70/1 with the SCORES has been disposed off without giving me any chance reply?

4. Please let me know what remedies available with the investor/client if the TM files the appeal u/s 34 in the wrong jurisdiction (not of investor/client) and the NSE support/favour the said misdeed of the TM.

6. What happened if the TM files an appeal u/s 34 in the wrong jurisdiction and the client files objection challenging the jurisdiction of the appeal u/s 34, violating the SEBI Circular no. CIR/MRD/ICC/20/ 2013 dated 05.07.2013 and NSE FAQ relating to the Arbitration mechanism of the SEBI/NSE (point No 35 and 36)?

7. Where the TM should file appeal u/s 34 of the Arbitration and Conciliation Act, against the Client?

8. *What is the jurisdiction of the appeal u/s 34 of the Arbitration and Conciliation Act in the Arbitration matter No.:NSEKRO/0065507/20-21/ISC/IGRP/ARB in which the Client/ investor address is Dist North 24 Parganas, West Bengal?*

12. *What action the SEBI will take against the NSE and the TM for their misdeed?*

14. *Why the NSE is blindly favouring the TM named SMIFS Ltd?*

4. The respondent in response to the query 1,7 and 8, the detailed process related to Arbitration Mechanism in stock Exchanges and the information pertaining to the place of arbitration/appellate arbitration, is provided from page no. 90 onwards of Chapter 6-“Administration of Stock Exchanges and Clearing Corporations” of SEBI Master Circular for Stock Exchanges and Clearing Corporations dated July 05,2021. The respondent also provided the link for accessing the same. The respondent, in response to query numbers 3, 4, 6, 12 and 14, informed that the queries are in the nature of seeking clarification/opinion and accordingly, the same cannot be construed as seeking “information” as defined under section 2(f) of the RTI Act. The appellant, in his appeal, *inter alia*, submitted that SEBI must have information like the jurisdiction of the appeal under section 34 of the Arbitration and Conciliation Act. The appellant also stated that there is no information regarding jurisdiction in Chapter 6 of the Master Circular dated July 05, 2021.

5. I have perused the above mentioned queries and the response provided thereto. On consideration, I find that the queries are in the nature of seeking clarification/guidance/opinion/reason from the respondent regarding various issue. The queries also appear to be situational queries. In my opinion, the CPIO is not supposed to provide clarification/opinion; or to interpret information; or to compile information as per the desire of the appellant under the ambit of the RTI Act. In this context, reliance is placed on matter of *Azad Singh vs. CPIO, Oriental Insurance Company Limited* (order dated March 23, 2021) wherein the Hon’ble CIC observed that “7. *The Commission, after hearing the submissions of both the parties and after perusal of records, observed that some queries of the appellant are in the nature of seeking explanation/ opinion/ advice/ confirmation/ clarification from the CPIO and he has expected that the CPIO firstly should analyze the documents and then provide information to the appellant. But the CPIO is not supposed to create information; or to interpret information; or to compile information as per the desire of the appellant under the ambit of the RTI Act. As per Section 2(f) of the RTI Act, the reasons/ opinions/ advices can only be provided to the applicants if it is available on record of the public authority. The CPIO cannot create information in the manner as sought by the appellant. The CPIO is only a communicator of information based on the records held in the office and hence, he cannot be expected to do research work to deduce anything from the material therein and then supply it to him.*” In the context of seeking replies to situational queries, I note that the Hon’ble CIC, in the matter of *Mr. Mahendra Kumar Mehta vs. CPIO, SEBI* (Judgment dated April 12, 2021), held that: “9. *This Commission observes*

that the appellant herein attempts to seek legal opinion/clarification from the CPIO to his situational queries with regard to 'the circular, rules, regulations, notification etc. regarding trading member for taking stock in pledge, collateral, or security for providing margin to do trade in reference to derivatives segment, charging of interest and GST, precaution to be taken by trading member for protection of constituents individual/HUF etc.'. Therefore, the CPIO is not supposed to interpret information; or to furnish replies to situational queries; or to furnish clarifications. Hence, such queries seeking legal opinion/clarification from the CPIO are not covered within the definition of 'information' u/Section 2(f) of the RTI Act, 2005. Accordingly, this Commission upholds the contention put forth by the CPIO." In view of these observations, I find that the said queries cannot be construed as seeking 'information' as defined under section 2 (f) of the RTI Act. Notwithstanding the same, I note that the respondent has guided the appellant to refer to the SEBI Master Circular for Stock Exchanges and Clearing Corporations issued by SEBI on July 05,2021. Accordingly, I do not find any deficiency in the response.

6. **Query numbers 2 and 5-** The appellant, vide query numbers 2 and 5, sought the following information-

2. I have filed a complaint against the NSE with the SCORES vide complaint reference No. SEBIE/MH23/00.....70/1 in regards to the NSEs favour to the Trading Member (TM) named SMIFS Ltd for filling the Appeal U/s 34 of the Arbitration and Conciliation Act in the wrong jurisdiction (by the TM), please let me know what happened if the NSE as well as the aforesaid TM violates the SEBI Circular no. CIR/MRD/ICC/20/2013 dated 05.07.2013 and the TM file the appeal u/s 34 in the wrong jurisdiction and the NSE support/favour the same even after objection by the client?

5. Please let me know where should the client/investor file the appeal against the closer of the complaint being no. SEBIE/MH23/00.....70/1, without giving any chance to the complainant to place his submission?

7. The respondent, in response to query number 2, informed regarding the advisory issued by NSE to the Trading Member on May 04, 2023. With respect to query number 5, the respondent informed that the appellant may file for a review through the SCORES portal if he is not satisfied with the complaint redressal or closure in the SCORES portal.

8. I have perused the queries and the response provided thereto. On consideration, I find that the respondent has adequately addressed the queries by providing the information available with him. Accordingly, I do not find any deficiency in the response.

9. **Query numbers 9, 11 and 13-** The appellant, vide query numbers 9, 11 and 13, sought the following information-

9. Who is the person concern in the National Stock Exchange of India (NSE) responsible for the RTI replies?

11. Who is the person concern in the NSE to deal with, please provide the name and mail ID of the same?

13. Please provide me list of such appeal filed by the TM named SMIFS Ltd in the wrong jurisdiction and also let me know what you have done in this regards.

10. The respondent, in response to the aforesaid queries, informed that the requested information does not pertain to SEBI.

11. I have perused the queries and the response provided thereto. I note that the respondent has categorically stated that the information sought by the appellant does not pertain to SEBI. I find that the queries have been adequately addressed and no further intervention is warranted at this stage.

12. **Query number 10-** The appellant, vide query number 10, sought the following information-

10. Who is the person concern in the SEBI to deal with, please provide the name and mail ID of the same?

13. The respondent, in response to the aforesaid query, informed that the query is vague and not clear and accordingly, the same cannot be construed as seeking “information” as defined under section 2(f) of the RTI Act.

14. On perusal of the query, the same appears to be vague and not specific. In this context, I note that in the matter of *Shri S. C. Sharma vs. CPIO, SEBI* (Decision dated August 30, 2012), the Hon’ble CIC held: “*Since the Appellant had not clearly stated what exact information he wanted, the CPIO could not have provided any specific information to him.*” In view of these observations, I do not find any deficiency in the response.

15. In view of the above observations, I find that there is no need to interfere with the decision of the respondent. The Appeal is accordingly dismissed.

Place: Mumbai

Date: July 10, 2023

ANAND BAIWAR

APPELLATE AUTHORITY UNDER THE RTI ACT
SECURITIES AND EXCHANGE BOARD OF INDIA